

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FOOD NOT BOMBS HOUSTON,]	
BRANDON WALSH,]	
Plaintiffs,]	
]	
v.]	C.A. No. 4:24-CV-338
]	
THE CITY OF HOUSTON, TEXAS,]	
Defendant.]	

ORAL AND VIDEOTAPED DEPOSITION OF

PHILLIP PICONE

FEBRUARY 18, 2025

ORAL DEPOSITION OF PHILLIP PICONE, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and numbered cause on the 18th of February, 2025, from 10:04 a.m. to 12:18 a.m., before Shawn Kelley, CSR No. 3448 in and for the State of Texas, by machine shorthand and computer-aided transcription, at 511 Broadway Street, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Nell McCallum & Associates Inc. Houston (713) 861-0203

<p>1 Okay?</p> <p>2 A. Yes.</p> <p>3 Q. I'm going to show you -- what's the next exhibit?</p> <p>4 Let's go -- mark this as Exhibit 49.</p> <p>5</p> <p>6 [Exhibit 49 marked, Plaintiffs' First Amended</p> <p>7 Original Complaint]</p> <p>8 MR. SOH:</p> <p>9 Q. All right. I'm handing you what's marked</p> <p>10 Exhibit 49. That is a copy of -- it's the first amended</p> <p>11 original complaint. It's a lawsuit that you filed</p> <p>12 against the City of Houston in 2019. Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Okay. Let me know when you have finished taking</p> <p>15 a glance at it, Mr. Picone.</p> <p>16 A. I will. February of '19. I've seen this before.</p> <p>17 Q. Okay. So I want to be clear, you filed a lawsuit</p> <p>18 in 2019 against the City of Houston in part to overturn</p> <p>19 the charitable feeding ordinance or what you called to</p> <p>20 be the anti-food sharing ordinance. Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Okay. Let me just get a little more background</p> <p>23 for you. I believe in -- I don't remember where I read</p> <p>24 this, but I believe somewhere either in that complaint</p> <p>25 or your declaration or in the other complaint you talked</p> <p style="text-align: right;">Page 13</p>	<p>1 there other day a week that you do that?</p> <p>2 A. Yeah, so around 2016, we'll go back to that date,</p> <p>3 when I was no longer gainfully employed, I had -- I had</p> <p>4 availability to me. So that's when I decided on Fridays</p> <p>5 I'm going to go do this.</p> <p>6 Q. Okay.</p> <p>7 A. I'm going to do this on Fridays. And so from</p> <p>8 2016 on, that's where you would find me just about every</p> <p>9 Friday night.</p> <p>10 Q. Okay. How did you first hear about Food Not</p> <p>11 Bombs Houston?</p> <p>12 A. Okay. 2005 -- 2005 there was a group of people</p> <p>13 that congregated in Crawford, Texas. It was started by</p> <p>14 a woman named Cindy Sheehan whose son had died in the</p> <p>15 Iraq war, and she wanted to know why. So she went down</p> <p>16 to Crawford, because Bush was on vacation, and he had</p> <p>17 lived in Crawford. And she parked herself in a ditch.</p> <p>18 There's no streets or anything like that. There's just</p> <p>19 a ditch and then the land.</p> <p>20 And so next thing you know everybody from all</p> <p>21 over the country starts going down there with her,</p> <p>22 because all she wanted to know is what was the noble</p> <p>23 cause. Bush had said there was a noble cause for the</p> <p>24 war. Her son had died, and she wanted to know what the</p> <p>25 noble cause was.</p> <p style="text-align: right;">Page 15</p>
<p>1 about you started food sharing with Food Not Bombs</p> <p>2 Houston in 2011. Does that sound right to you?</p> <p>3 A. That sounds right.</p> <p>4 Q. Okay. And that you mostly did your food sharing</p> <p>5 with Food Not Bombs Houston on Fridays; is that correct?</p> <p>6 A. If we're going back to 2011, I would do it when I</p> <p>7 was available, and 2011 I'm working.</p> <p>8 Q. Right.</p> <p>9 A. And my job at the time had me working weekends</p> <p>10 every so many weeks. So I didn't have a set date or day</p> <p>11 at that time. I would go when I was available.</p> <p>12 Sometimes I'd be off on the weekends. Sometimes I had</p> <p>13 to cover the whole city on that weekend. So I was -- I</p> <p>14 was -- I was going, but I was going not on a set day.</p> <p>15 Q. Okay. Back in 2011 when you started, about how</p> <p>16 many times a week or a month did you food share with</p> <p>17 Food Not Bombs Houston?</p> <p>18 A. Probably the -- the same, about once a week.</p> <p>19 Q. Okay. And has that stayed consistent</p> <p>20 through 2023?</p> <p>21 A. The once a week?</p> <p>22 Q. Yes.</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And do you generally -- now that you're</p> <p>25 retired, do you generally food share on Fridays, or is</p> <p style="text-align: right;">Page 14</p>	<p>1 And Bush would not meet with her. He met with</p> <p>2 other family members of people who had died, but he did</p> <p>3 not meet with her. So everybody from all over the</p> <p>4 country was going down there, and I eventually made my</p> <p>5 way down there.</p> <p>6 And tied back into the food, I found myself very</p> <p>7 comfortable down there in the kitchen cooking. I would</p> <p>8 cook breakfast in the morning. And I had the pleasure</p> <p>9 of having Joan Baez enjoy and compliment me on my food.</p> <p>10 And -- and that -- I -- that -- that -- while we</p> <p>11 were down there and while I'm doing the food, I'm just</p> <p>12 doing the morning cooking, it was nice in that little</p> <p>13 kitchen, there were people doing the afternoon and the</p> <p>14 dinner cooking. And one of the guys names was -- is</p> <p>15 Keith, Mack. He would call himself Mack. He introduced</p> <p>16 himself to me as Mack. That's all I knew was Mack.</p> <p>17 And I don't know where he got his food from, but</p> <p>18 he would get his food, he'd bring it back, he'd start</p> <p>19 cooking big batches of this food, and his wife was</p> <p>20 there, and I would just help him cook whatever food he</p> <p>21 was doing. I didn't go get any food. I didn't do</p> <p>22 anything, didn't come up with any recipes, just helping</p> <p>23 him cook the food.</p> <p>24 Didn't know it at the time. This is 2005. I</p> <p>25 didn't realize until maybe 2012 that the Mack that I met</p> <p style="text-align: right;">Page 16</p>

1 bricks to keep their place in line that you've seen?

2 **A. I can't recall anything like that.**

3 MR. SOH: Okay. Let's take a quick break, and

4 then we're going to go -- we're going to go start on

5 that document I gave you earlier.

6 THE WITNESS: Okay.

7 VIDEOGRAPHER: Off the record, 11 o'clock.

8 [Recess]

9 VIDEOGRAPHER: We're back on the record at 11:06.

10 [Exhibit 50 marked, Plaintiff's First Amended

11 Original Complaint]

12 MR. SOH:

13 Q. Mr. Picone, I've also handed you Exhibit 50,

14 which is the First Amended Original Complaint in the

15 current lawsuit that was filed in 2023 where you sued

16 the City of Houston about the charitable feeding

17 ordinance. Do you see that?

18 **A. I do see it.**

19 Q. All right. If you want to take a second, feel

20 free to look through it if you'd like to. I'm going to

21 ask you questions about both of those lawsuits that are

22 in front of you whenever you're ready.

23 Okay. Mr. Picone, just as a threshold thing, let

24 me just demonstrate something to you real quick. I'm

25 going to circle that. When I talk about the 2023

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1 lawsuit, I'm -- that's where you -- that's how we

2 know -- that's how we lawyers know that it was filed in

3 2023. And when I talk about the 2019 lawsuit, okay,

4 that's how we lawyers know it was filed in 2019. Do you

5 see that?

6 **A. I do.**

7 Q. So when I ask -- when I refer you to one of

8 those, the 2019 lawsuit or the 2023 lawsuit, that's how

9 you know which one I'm talking about, just from --

10 **A. Okay.**

11 Q. -- those papers in front of you. Do you

12 understand that?

13 **A. I do.**

14 Q. All right. So in these lawsuits I believe the

15 lawsuits call it the anti-food sharing law, and in the

16 course of this deposition I've been calling it the

17 charitable feeding ordinance. Do we understand that

18 we're talking about the same ordinances that are at

19 issue in the lawsuit, but we're just calling it two

20 different terms? Do you --

21 **A. Okay.**

22 Q. -- understand that?

23 **A. I do.**

24 Q. Okay. So in the 2019 lawsuit, if you'd go to

25 page 17, which is under prayer for relief -- do you see

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1 that?

2 **A. I do.**

3 Q. The second line says that you wish to declare the

4 anti-sharing food ordinance unconstitutional and

5 unconstitutional as applied. Do you see that?

6 **A. I do.**

7 Q. And that in -- if you go down a little bit

8 further, it says you wish to declare the anti-sharing

9 food ordinance or portions thereof unconstitutional. Do

10 you see that?

11 **A. Right, yes.**

12 Q. Okay. And if we go to the 2023 lawsuit, if we go

13 to page 17 -- okay? Under the same -- that's the same

14 prayer section, and it says -- if you go to section H,

15 you say that you want to declare the anti-food sharing

16 law unconstitutional. Do you see that?

17 **A. I do.**

18 Q. So in both the 2019 and 2023 lawsuits that you

19 filed against the City of Houston, you wanted to declare

20 the anti-food sharing law or the charitable feeding

21 ordinance unconstitutional; is that correct?

22 MR. KALLINEN: Objection, --

23 **A. That's correct.**

24 MR. KALLINEN: -- document speaks for itself.

25 MR. SOH:

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1 Q. All right.

2 **A. It does.**

3 Q. And there are some similarities in the lawsuits,

4 and I just want to go through some of those similarities

5 if you get a chance. Let's go to the 2019 lawsuit. If

6 you go to page -- if you go to page 4 you talk about the

7 Food Not Bombs website having agreements, a vision and a

8 mission statement that you have cited in your 2019

9 lawsuit. Do you see that?

10 **A. I do.**

11 Q. And if you go to your 2023 lawsuit, on page 5 and

12 6, the same agreements, vision and mission statement are

13 included in your 2023 lawsuit, correct?

14 **A. Okay. Yes.**

15 Q. Do you see that?

16 **A. I do.**

17 Q. Okay. And I'm correct, that they're the same

18 Food Not Bombs mission statements, agreements and vision

19 are included in both lawsuits, correct?

20 MR. KALLINEN: Objection, the document speaks for

21 itself.

22 **A. Yeah, they do.**

23 MR. SOH:

24 Q. Okay.

25 **A. They speak for themselves.**

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1 Q. But --
2 A. I mean, it's here.
3 Q. Yeah.
4 A. It obvious. It's here.
5 Q. And then, similarly, you quote scripture in
6 both -- both lawsuits quote scripture. If we go to the
7 2019 lawsuit, the first two passages that are quoted
8 from the Holy Bible are Matthew 25:35 and Isaiah 58:10.
9 Do you see that on page 6?
10 A. Yes, I do.
11 Q. All right. Matthew 25:35 says for I was hungry,
12 and you gave me food. I was thirsty, and you gave me
13 drink. I was a stranger, and you welcomed me.
14 Isaiah 58:10 says if you pour yourself out for
15 the hungry and satisfy the desire of the afflicted
16 then -- then shall your light rise in the darkness and
17 your gloom be as the --
18 A. A noonday.
19 Q. -- a noonday.
20 All right. And if you go to the 2023 lawsuit, if
21 you go to page 4, Isaiah 58:10 and Matthew 25:34, 36,
22 which includes Matthew 25:35, they're both also quoted
23 in both lawsuits, correct?
24 A. Yes.
25 Q. Now, to be fair, there is a slight difference

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1 in -- in scriptures that are quoted in both lawsuits,
2 but at least those two portions of the Bible are copied
3 in both lawsuits, correct?
4 A. There are different versions of the Bible that --
5 Q. Right.
6 A. -- might word things a little differently, but
7 the concept comes through the same.
8 Q. But both the 2019 and 2023 lawsuits have the --
9 in essence, the same -- at least the same two Bible
10 verses quoted?
11 A. Apparently they do.
12 Q. Okay. Fair enough. All right. So in 2019, when
13 you filed the first lawsuit against the City -- oh, by
14 the way, have you filed any other lawsuits against any
15 other parties in your life?
16 A. Never.
17 Q. Okay. So the only two lawsuits -- and I don't
18 care about divorces or anything like that, but the only
19 two lawsuits that you have been a part of were the two
20 lawsuits that are currently in front of you marked as
21 Exhibit 49 and 50, correct?
22 A. Yeah, Exhibit 49 would be the first lawsuit I've
23 ever filed.
24 Q. And Exhibit 50 is --
25 A. Or been a part of.

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1 Q. And Exhibit 50 is the second?
2 A. The second one.
3 Q. And only?
4 A. That's it.
5 Q. Okay. So back to your 2019 lawsuit, can you
6 explain to me just in your own words why you wanted
7 the -- the charitable feeding ordinance declared
8 unconstitutional?
9 MS. GILBERT: Objection, the document speaks for
10 itself.
11 MR. SOH: Okay.
12 A. Yeah, I think this whole paper kind of
13 explains --
14 MR. SOH:
15 Q. And the reason why -- the reason why I'm asking
16 you that is I do not want to get into -- I'm sure your
17 lawyer's told you I do not want to get into discussions
18 and conversations that you had with your lawyer at any
19 point in time in this deposition.
20 What I'm just getting from you is in your own
21 words, in 2019 when you filed this lawsuit, why did you
22 want to declare the charitable feeding ordinance
23 unconstitutional?
24 A. It's fair to say I probably wanted it to be
25 declared unconstitutional when it was voted on in April

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1 of 2012 and began to be enforced in June of 2012, but at
2 that time, without any input from Food Not Bombs, Annise
3 Parker, who wrote it or at least was mayor at the time
4 and it had her blessings, she exempted Food Not Bombs
5 from the ordinance.
6 She actually put out something on her letterhead
7 and sent us a piece of paper saying that -- that we were
8 exempt and that we could serve on that property. She
9 actually wrote down the address of 500 McKinney, that we
10 had permission to be there.
11 That made it a little hard for us to want to
12 fight something, because we were still able to feed.
13 You know, at that time we're looking at it like that,
14 you know, we're still able to share our food. You know,
15 but it had a chilling effect on other organizations that
16 were feeding, as well, whether they were, you know,
17 places where immigrants could go, you know, for -- you
18 know, for safety or whether they were churches that were
19 sharing food in their community or just other volunteers
20 organizations. And it had a -- that had a chilling
21 effect on them. And the way I know that is because when
22 that ordinance went into effect, suddenly the numbers
23 that -- of the people coming to Food Not Bombs increased
24 dramatically because of those other places closing down.
25 And so, you know, but, like I said, you know, we

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<p>1 were given an exemption, and that kind of took a little</p> <p>2 bit of our argument away, because we weren't being</p> <p>3 stopped from doing anything, but that changed. That</p> <p>4 changed.</p> <p>5 Q. Okay. So --</p> <p>6 A. That changed.</p> <p>7 Q. -- you gave a long answer, and I'm trying to see</p> <p>8 if I understand it. In 2019 at least one of the reasons</p> <p>9 why you wanted to file a lawsuit to declare the</p> <p>10 charitable feeding ordinance unconstitutional was that</p> <p>11 it had a chilling effect on other charitable feeding</p> <p>12 groups; is that correct?</p> <p>13 A. I think --</p> <p>14 MR. KALLINEN: Objection, misstates prior</p> <p>15 testimony. The document speaks for itself.</p> <p>16 A. Yeah. If we go to 2019 --</p> <p>17 MR. SOH:</p> <p>18 Q. Right.</p> <p>19 A. If we go to 2019, this is long after 2012.</p> <p>20 Q. Right.</p> <p>21 A. We go to 2019, the reason was a little bit</p> <p>22 different.</p> <p>23 Q. Okay.</p> <p>24 A. The reason is because it was in 2019, right</p> <p>25 around this time, that there was a decision made in</p> <p style="text-align: right;">Page 57</p>	<p>1 Q. And in 2023 when you filed the second lawsuit</p> <p>2 against the City of Houston, did you believe the</p> <p>3 charitable feeding ordinance was unconstitutional?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. All right. So let's go to the 2023</p> <p>6 lawsuit, which I believe is Exhibit 51. No, Exhibit 50,</p> <p>7 sorry, Exhibit 50. I just have a couple of questions</p> <p>8 about that as we go through it. I'm trying to remember</p> <p>9 your prior testimony. I think you believe that Mayor</p> <p>10 Parker -- did you say exempted Food Not Bombs from the</p> <p>11 charitable feeding ordinance for charitable feedings at</p> <p>12 the library? Was that your word?</p> <p>13 A. To that effect.</p> <p>14 Q. Okay. Do you believe that Food Not Bombs Houston</p> <p>15 had permission from the City of Houston to feed at the</p> <p>16 Houston Public Library in 2023?</p> <p>17 A. 2023? When I got my ticket, when I was given the</p> <p>18 ticket, do I believe that? I believe that her exemption</p> <p>19 had not been rescinded at --</p> <p>20 Q. Okay.</p> <p>21 A. -- that time.</p> <p>22 Q. Do you believe that -- and you believe that a</p> <p>23 property owner, whether it be public property or private</p> <p>24 property, can certainly give permission for a charitable</p> <p>25 feeding on its property and then subsequently can change</p> <p style="text-align: right;">Page 59</p>
<p>1 Florida where a man was also ticketed for feeding the</p> <p>2 homeless and just happened to be with Food Not Bombs, as</p> <p>3 well. He happened to be a pastor, just, you know, just</p> <p>4 happened. And his case took a number of years to get</p> <p>5 through, but by the time just before this had happened,</p> <p>6 the district -- is it district 11 down there?</p> <p>7 MR. KALLINEN: You mean Circuit Court of --</p> <p>8 THE WITNESS: Circuit court.</p> <p>9 MR. KALLINEN: -- Appeals No. 11?</p> <p>10 A. Yeah. They had decided that -- that -- that it</p> <p>11 was unconstitutional. We felt that already, but they</p> <p>12 decided it was unconstitutional. So with that case from</p> <p>13 that district court with that decision, it seemed maybe</p> <p>14 to -- it seemed maybe that the door might be open for us</p> <p>15 to do something like this.</p> <p>16 MR. SOH:</p> <p>17 Q. Okay. Let me -- let me see if I -- let me ask</p> <p>18 you these questions. In 2012, when the charitable</p> <p>19 feeding ordinance was passed, did you believe that it</p> <p>20 was unconstitutional?</p> <p>21 A. Absolutely.</p> <p>22 Q. In 2019 when you filed the first lawsuit against</p> <p>23 the City, did you believe that the charitable feeding</p> <p>24 ordinance was unconstitutional?</p> <p>25 A. Absolutely.</p> <p style="text-align: right;">Page 58</p>	<p>1 their mind and rescind that permission, correct?</p> <p>2 MR. KALLINEN: Objection, that's a legal</p> <p>3 question.</p> <p>4 A. Yeah, I --</p> <p>5 MR. KALLINEN: Calls for speculation.</p> <p>6 A. Yeah, I -- I'm -- I'm not sure how to answer that</p> <p>7 question in the sense of I'm -- I'm not -- I'm not</p> <p>8 versed on property laws to be able to -- to answer that.</p> <p>9 MR. SOH:</p> <p>10 Q. Simple question. Can a property owner change its</p> <p>11 mind about giving permission to a group to perform a</p> <p>12 charitable feeding on their property?</p> <p>13 A. If they gave -- if somebody gave permission to do</p> <p>14 something, can they take their permission back?</p> <p>15 Q. Yes.</p> <p>16 A. I think in -- in -- in most circumstances or some</p> <p>17 circumstances, as long as it's not contractual or</p> <p>18 something. I -- I could see how that could happen.</p> <p>19 Q. And you believe that the City of Houston did</p> <p>20 not -- did not revoke its permission to Food Not Bombs</p> <p>21 to feed at the downtown public library, correct?</p> <p>22 A. Yeah, I believe Annise -- Annise Parker's -- it</p> <p>23 was still on the website on the date that I was given my</p> <p>24 ticket. Annise Parker's exemption was still available.</p> <p>25 Q. Okay. I just want to make it clear.</p> <p style="text-align: right;">Page 60</p>

<p>1 MR. SOH: Okay. All right.</p> <p>2 MR. KALLINEN: Well, you're incorrect.</p> <p>3 THE WITNESS: Okay.</p> <p>4 MR. KALLINEN: Just to let you know.</p> <p>5 MR. SOH: Do you want to --</p> <p>6 THE WITNESS: Am I?</p> <p>7 MR. SOH: Do you want me --</p> <p>8 THE WITNESS: Okay.</p> <p>9 MR. KALLINEN: -- to clean it up, or do you want</p> <p>10 me to ask some --</p> <p>11 THE WITNESS: Correct me.</p> <p>12 MR. SOH: -- follow-ups.</p> <p>13 THE WITNESS: I don't know.</p> <p>14 MR. KALLINEN: It's been so long maybe you forgot</p> <p>15 you signed an agreement.</p> <p>16 THE WITNESS: I did?</p> <p>17 MR. KALLINEN: Sure, you did.</p> <p>18 THE WITNESS: Oh, okay. I didn't know that.</p> <p>19 Okay.</p> <p>20 MR. SOH:</p> <p>21 Q. All right. Let me ask you this.</p> <p>22 MR. KALLINEN: It is --</p> <p>23 THE WITNESS: Well, that's -- that's --</p> <p>24 MR. KALLINEN: -- over two years old, yeah.</p> <p>25 THE WITNESS: That --</p> <p style="text-align: right;">Page 65</p>	<p>1 you -- does Mr. Kallinen have a right to receive payment</p> <p>2 if he were to recover something as a result of your</p> <p>3 lawsuit against the City?</p> <p>4 MR. KALLINEN: Objection, that would ask for a</p> <p>5 legal -- a legal conclusion, because there's a whole</p> <p>6 bunch of different legal theories regarding collection</p> <p>7 of attorney's fees and expenses for clients.</p> <p>8 MR. SOH:</p> <p>9 Q. Let me ask you this. Do you have any idea what's</p> <p>10 in the contract that you signed with Mr. Kallinen as you</p> <p>11 sit here today?</p> <p>12 A. Well, obviously, I signed something that I don't</p> <p>13 even remember signing. So --</p> <p>14 Q. That's all, yeah.</p> <p>15 A. So whatever -- whatever I signed is -- is -- read</p> <p>16 that, and that's what I --</p> <p>17 Q. That's all --</p> <p>18 A. -- agreed to.</p> <p>19 Q. -- I need to know.</p> <p>20 [Exhibit 51 marked, Order]</p> <p>21 MR. SOH:</p> <p>22 Q. All right, sir. Let me ask you this. Let me</p> <p>23 hand you what's been marked as Exhibit 51, if you want</p> <p>24 to take a look at that very quickly. And I will just</p> <p>25 tell you that Exhibit 51 is the order signed by the</p> <p style="text-align: right;">Page 67</p>
<p>1 MR. SOH:</p> <p>2 Q. Okay. Let me ask you this question. Are you</p> <p>3 paying Mr. Kallinen by the --</p> <p>4 THE WITNESS: Oh, this one?</p> <p>5 MR. KALLINEN: What's that?</p> <p>6 THE WITNESS: On this one, the 2019.</p> <p>7 MR. KALLINEN: No, this most recent one.</p> <p>8 THE WITNESS: Oh, okay.</p> <p>9 MR. SOH:</p> <p>10 Q. I think I know the answer, but I'm going to just</p> <p>11 ask it to just to get the record filled up. Are you</p> <p>12 paying Mr. Kallinen by the hour?</p> <p>13 A. I'm not paying him anything.</p> <p>14 Q. Okay.</p> <p>15 MR. KALLINEN: Objection, not relevant.</p> <p>16 MR. SOH:</p> <p>17 Q. Are you familiar with the term contingency fee?</p> <p>18 A. Is that like a down payment?</p> <p>19 Q. No.</p> <p>20 MR. KALLINEN: Objection, --</p> <p>21 MR. SOH:</p> <p>22 Q. All right.</p> <p>23 MR. KALLINEN: -- not relevant.</p> <p>24 MR. SOH:</p> <p>25 Q. Let me ask you this. Are you -- are you -- are</p> <p style="text-align: right;">Page 66</p>	<p>1 Court in your 2019 lawsuit in essence dismissing the</p> <p>2 lawsuit. And just whenever you get a chance to look at</p> <p>3 it, just let me know.</p> <p>4 A. Okay.</p> <p>5 Q. All right. Have you ever seen that -- Exhibit 51</p> <p>6 is the order dismissing your 2019 lawsuit where you</p> <p>7 sought to find the charitable feeding ordinance</p> <p>8 unconstitutional. Have you ever seen that before?</p> <p>9 MR. KALLINEN: Objection, not relevant.</p> <p>10 A. I don't recall ever seeing this before.</p> <p>11 MR. SOH:</p> <p>12 Q. Were you aware that your 2019 lawsuit where you</p> <p>13 sought to have the charitable feeding ordinance held as</p> <p>14 unconstitutional, were you aware that that lawsuit was</p> <p>15 dismissed?</p> <p>16 A. Yes.</p> <p>17 Q. And were you aware that that lawsuit was</p> <p>18 dismissed in 2020?</p> <p>19 MR. KALLINEN: Objection, not relevant.</p> <p>20 A. I'm not sure of the -- of -- of when, but I do</p> <p>21 know that it was dismissed.</p> <p>22 MR. SOH:</p> <p>23 Q. Okay. Will you go to the last page of</p> <p>24 Exhibit 51, please? After IV it says: For the</p> <p>25 foregoing reasons, it is hereby ordered that defendant's</p> <p style="text-align: right;">Page 68</p>

<p>1 motion to dismiss is granted, and it's signed on</p> <p>2 February 10th, 2020. Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. All right.</p> <p>5 MR. KALLINEN: Objection, document speaks for</p> <p>6 itself.</p> <p>7 MR. SOH:</p> <p>8 Q. On or about February 10, 2020, do you recall that</p> <p>9 your 2019 lawsuit against the City was dismissed?</p> <p>10 MR. KALLINEN: Objection, not relevant.</p> <p>11 A. I don't know when.</p> <p>12 MR. SOH:</p> <p>13 Q. Okay.</p> <p>14 A. I know when this was signed. I don't know when I</p> <p>15 realized that -- that this case was dismissed.</p> <p>16 Q. Okay. But you knew it was dismissed at some</p> <p>17 point in time?</p> <p>18 A. I knew it was dismissed.</p> <p>19 Q. All right. You can put those away, sir. Let's</p> <p>20 go to -- I'm going to hand you what's marked as</p> <p>21 Exhibit 52.</p> <p>22 MR. SOH: Mr. Court Reporter, I have color and</p> <p>23 black and white. Do you care if the witness gets color</p> <p>24 or black and white.</p> <p>25 REPORTER: I don't care.</p> <p style="text-align: right;">Page 69</p>	<p>1 A. Well, I show up. It's a Friday, of course,</p> <p>2 right? And I show up with the food, and he's standing</p> <p>3 there. This was the second day that, you know, law</p> <p>4 enforcement was out there to give tickets. The first</p> <p>5 one was two days prior to this, on March 1st, which was</p> <p>6 a Wednesday. But this is day two.</p> <p>7 I'm -- I don't know what to expect, because</p> <p>8 there's nothing to go by except one previous encounter</p> <p>9 two days earlier. I did ask Officer Ancira if -- if --</p> <p>10 if -- if this was going to be handled the way it was</p> <p>11 Wednesday. Are you going to handle the way it was</p> <p>12 Wednesday? His reply was he doesn't know how it was</p> <p>13 handled Wednesday. He wasn't there.</p> <p>14 So that, you know, a little bit of anxiety there,</p> <p>15 because, yeah, we could be given a ticket. We could</p> <p>16 also be arrested. That was always a possibility. And</p> <p>17 he never took that off the table.</p> <p>18 Q. Just to clarify, what happened two days earlier</p> <p>19 on March the 1st?</p> <p>20 A. A ticket was given out. That was the first</p> <p>21 ticket for -- for -- for sharing food was given out on</p> <p>22 March 1st. It was another officer there whose name I</p> <p>23 don't recall, but he was not -- he was not very</p> <p>24 comfortable -- he was not comfortable with what he did,</p> <p>25 and it made the whole situation feel uncomfortable for a</p> <p style="text-align: right;">Page 71</p>
<p>1 [Exhibit 52 marked, 03/03/2023 HPD Report]</p> <p>2 MR. SOH: Okay. Mr. Picone, take a second to</p> <p>3 look at this citation and let me know when you're done</p> <p>4 looking at it.</p> <p>5 A. Yes. Yes, I'm done.</p> <p>6 MR. SOH:</p> <p>7 Q. You're done? Okay.</p> <p>8 A. Yeah.</p> <p>9 Q. What is Exhibit 52?</p> <p>10 A. This looks like a summation of the citation, the</p> <p>11 ticket that I was given with -- you know, with some</p> <p>12 further details that were not on the actual citation.</p> <p>13 Q. Okay. And you were given this citation or you</p> <p>14 were cited by the Houston Police Department for a</p> <p>15 violation of the charitable feeding ordinance on, looks</p> <p>16 like, March 3rd, 2023; is that correct?</p> <p>17 A. That is correct.</p> <p>18 Q. And does that jibe with your recollection of --</p> <p>19 of the date you received your citation?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay. A couple of quick questions about this. I</p> <p>22 guess Officer Ancira wrote you the ticket?</p> <p>23 A. Yes, he did.</p> <p>24 Q. Can you tell me about your interactions with</p> <p>25 Officer Ancira that evening?</p> <p style="text-align: right;">Page 70</p>	<p>1 lot of people there that night.</p> <p>2 Q. Just to clarify, who was not comfortable?</p> <p>3 A. That officer, --</p> <p>4 Q. On --</p> <p>5 A. -- he was exhibiting, you know, behavior that</p> <p>6 made -- made -- made it look like he was a little</p> <p>7 stressed or uncomfortable. And the last thing you want</p> <p>8 is an officer to be uncomfortable.</p> <p>9 Q. Was that, you meant, on March the 1st?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. On -- to clarify your testimony, on March</p> <p>12 the 1st you said that the officer who wrote a citation</p> <p>13 to someone for violating the charitable food ordinance</p> <p>14 was acting uncomfortable; is that correct?</p> <p>15 A. He was acting a little not sure of himself.</p> <p>16 Q. Okay.</p> <p>17 A. You know, not -- didn't have a plan and -- you</p> <p>18 know what I mean? He was just a little uncomfortable</p> <p>19 with what was going on.</p> <p>20 Q. Was there anything else you recall on that March</p> <p>21 the 1st incident?</p> <p>22 A. There was a lot of people down there, more than</p> <p>23 we've ever seen before. People came out. City of</p> <p>24 Houston people came out to support what we were doing.</p> <p>25 So the crowd was tremendous down there. I remember</p> <p style="text-align: right;">Page 72</p>

1 that.

2 Q. And so why were you down there on -- on -- I

3 thought you -- you were normally down there on Fridays,

4 correct?

5 A. Normally down on Friday.

6 Q. Was there any reason you were down there on a

7 Wednesday?

8 A. This was the first ticket that was ever going to

9 be given out, the first time ever, after all these years

10 of serving and all these years of us being down there

11 and all the threats that we have gotten from the City,

12 which, by the way, were quite a few. Even Turner had

13 threatened us before, as well. But this is the furthest

14 it had ever gone, actually telling us we're going to get

15 a ticket. So, yeah, I was going to be there that day.

16 Q. Okay. You pointed at Exhibit 52 when you said

17 this ticket, and I want to make it clear that Exhibit 52

18 is the ticket you received on March the 3rd, --

19 A. That's correct.

20 Q. -- not the ticket that was -- that was given to

21 someone else on March the 1st; is that clear?

22 A. That is clear.

23 Q. Okay.

24 A. You're right about that.

25 Q. So I just want to clear it up since it's videoed

Page 73

1 and --

2 A. I mean these tickets.

3 Q. These tickets.

4 A. These tickets.

5 Q. Okay.

6 A. This is the first time tickets were actually

7 going to happen. And Turner had threatened us before

8 with tickets, and then it never happened. So when this

9 day comes, he's threatened us again, and he made it

10 really clear it was going to happen. So it was a big

11 day. It was a big day.

12 Q. Is there anything else -- is there anything else

13 you --

14 A. That was March 1st.

15 Q. Yes.

16 A. I'm sorry.

17 Q. On the March 1st ticket, do you recall anything

18 else that happened with respect to the issuance of the

19 ticket?

20 A. The ticket was issued. There were questions of

21 why. The ticket was accepted. I guess it's fair to say

22 it went without incident, although, you know, this was a

23 precedent that was being set in Houston on that day, but

24 the police department accomplished their goal of giving

25 out a ticket, and -- and it went without incident.

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1 Q. Sure.

2 A. I remember that. I remember it went without

3 incident.

4 Q. On the March the 1st ticket that you witnessed,

5 do you recall anyone yelling at the police officer

6 something like shame on you?

7 A. Yeah, I think there was some -- some of that.

8 The crowd was yelling that.

9 Q. Okay.

10 A. You know, and who was in the crowd? Just people

11 from all over Houston.

12 MR. KALLINEN: Objection, not relevant.

13 MR. SOH:

14 Q. All right. Okay. So let's focus back on the

15 ticket you received on March the 3rd. Okay? Is there

16 any -- do you recall Officer Ancira writing you the

17 ticket?

18 A. [Witness moving head up and down]

19 Q. Is there -- was this the only ticket you've

20 received for violating the charitable food ordinance?

21 A. Yes.

22 Q. In the prior -- previous to March the 3rd had you

23 ever received any written or verbal warnings from the

24 police about violating the charitable food ordinance?

25 A. Prior to this?

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1 Q. Yes.

2 A. Well, there was a sign that was posted where we

3 serve. So I guess that serves as notice. I can

4 understand that. But, again, from my point of view, I

5 felt that this is kind of a cruel thing and

6 unconstitutional.

7 Q. Right, but did -- but I want to be clear, did you

8 receive a -- a -- you know how you get a -- when you get

9 pulled over for a traffic stop the officer has a -- can

10 write you a speeding ticket or a -- give you a warning,

11 right?

12 A. Uh-huh.

13 Q. Were you ever given any warnings, a written

14 warning prior to your March 3rd ticket for violating the

15 charitable food ordinance?

16 A. So when I went down there that evening on

17 March 3rd, asked him if it was going to go down like it

18 went down Wednesday, he said he couldn't -- he wasn't --

19 he then handed me a piece of paper which was like a copy

20 of what was stuck on the fence. I believe --

21 Q. Okay.

22 A. -- you have a copy of that there.

23 Q. Sure.

24 A. He handed -- he showed me -- it was just a xerox

25 copy paper. He showed that to me and says: Are you

Page 76

1 aware of this? And I read it, and it's the same thing
 2 that's on -- on the metal fence behind us. That's the
 3 only thing he handed me, and he handed it to me at that
 4 time.
 5 Q. Okay. I'm going to show you what's previously
 6 been marked as Exhibit 6 in this lawsuit. And that's a
 7 picture of a notice on a sign. Is that the notice or
 8 the sign that you referred to in your previous answers?
 9 A. It looks like it.
 10 Q. Okay. And you're saying that before you received
 11 the ticket on March the 3rd, the officer gave you a
 12 piece of paper that had that or similar language to it,
 13 correct?
 14 A. Right, right, just handing me, you know, a copy
 15 of what that thing said, this --
 16 Q. Okay.
 17 A. -- thing said.
 18 Q. And -- and is that an accurate -- okay. So just
 19 going back to the -- did you ever receive any verbal
 20 warnings from any police officer or any -- prior to
 21 March the 3rd about violating the charitable food
 22 ordinance?
 23 A. No.
 24 Q. Okay.
 25 A. No.

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1 Q. So let's go through the -- the citation briefly
 2 here. If you go to the last page, these are some
 3 questions I have for you. Under the -- the long
 4 paragraph under officer's actions at the top, do you see
 5 that?
 6 A. Uh-huh. Under it?
 7 Q. Yeah.
 8 A. Disposition?
 9 Q. Yes. Can you read that paragraph? Or have you
 10 already read that paragraph?
 11 A. It says affiant issued --
 12 Q. No, no, I mean just read it to yourself. Excuse
 13 me.
 14 A. Oh, okay. I got you.
 15 Q. Yeah.
 16 A. Okay.
 17 Q. Okay. If you go halfway down, it says:
 18 Mr. Picone indicated that he was aware of the notice and
 19 that he received one the other day and that he will be
 20 the one feeding the homeless.
 21 Do you see that?
 22 A. I do.
 23 Q. Okay. And so when you -- when you -- when that
 24 ticket is talking about the notice, are you talking
 25 about the sign and then the language that copies the

Page 78

1 sign that was handed to you prior to receiving the
 2 ticket that you testified previously about?
 3 A. Restate that again.
 4 Q. Sure.
 5 A. What's the question?
 6 Q. Let me ask you this way. Where it says you're
 7 aware of the notice --
 8 A. Right.
 9 Q. -- in your citation, --
 10 A. Right.
 11 Q. -- what notice was he talking about, do you know?
 12 A. Well, the notice -- well, I don't know what he
 13 was talking about, but the notice that I was aware of
 14 was the one that was pinned to the -- to the steel
 15 gates.
 16 Q. Which is -- which you previously identified as
 17 Exhibit 6, right?
 18 A. Right.
 19 Q. And that same language was also on the piece of
 20 paper that Officer Ancira handed you immediately before
 21 issuing the citation?
 22 A. I would assume so.
 23 Q. All right.
 24 A. I would assume it was a duplicate.
 25 Q. And you say -- it says you received one the other

Page 79

1 day. Did you receive a copy of that notice previous to
 2 March the 3rd?
 3 A. No, no, no, no, no.
 4 Q. Okay.
 5 A. There was nobody -- nobody gave me or anybody any
 6 notice. The only notice that was handed out other than
 7 that sign, Exhibit 6, was -- was to the person on
 8 March 1st who was getting the ticket.
 9 Q. Did you agree to accept the citation on March the
 10 3rd in essence on behalf of Food Not Bombs Houston?
 11 A. No.
 12 Q. Okay. You didn't volunteer to accept the -- the
 13 citation?
 14 A. No.
 15 Q. Okay. Mister -- Officer Ancira just selected you
 16 amongst the other Food Not Bombs volunteers to receive
 17 the ticket?
 18 A. He wanted -- he wanted to know -- you know, he
 19 wanted to know who would be, in his words, very
 20 loosely -- I believe there's a video of us. So we can
 21 go to that video to know exactly what was said, but he
 22 wanted to know who was going to be leading or conducting
 23 or who's going to be the head person of this.
 24 And -- and then he said that, you know, you know,
 25 would you be accepting the -- would you be accepting the

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1 citation, or would you be accepting the ticket? And

2 I -- the video will say it. I was like I'm not

3 accepting the ticket. I'm just going to continue to do

4 what I've done all these other Fridays. I'm going to

5 continue to do that today, being Friday. And I believe

6 I have a constitutional right to do so. That was my

7 response to him.

8 It was not an acceptance of taking a ticket.

9 That's his job, to give me a ticket. I was not there to

10 take a ticket. I was there to do what I did every

11 Friday for the number of years I've been doing that.

12 And he was going to do what he was going to do.

13 It turned out that he gives me a ticket, but at

14 that point it remained to be seen.

15 Q. Okay. Did you -- did you tell Officer Ancira

16 that you were conducting a feeding or that you were in

17 charge of the feeding?

18 A. No, I couldn't do that, because no one's in

19 charge at Food Not Bombs. I think you -- you might be

20 familiar, it's a -- it's an organization that is -- has

21 no hierarchy, so to speak. So nobody's in charge. And

22 in order to conduct, you have to be in charge. So I'm

23 not conduct -- I'm not conducting anything. I'm just

24 one of many people who just showed up, you know, for a

25 cause.

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1 Q. Go down to where it says suspect statements. It

2 says: Mr. Picone indicated that he was aware of the

3 violation and that he already had obtained a copy of the

4 City of Houston ordinance.

5 Do you see that?

6 A. I do.

7 Q. When did you obtain a copy of the City of Houston

8 charitable feeding ordinance?

9 A. The original ordinance?

10 Q. Any -- any copy of the ordinance. Any version of

11 the ordinance, excuse me.

12 A. When -- when the -- when the ordinance first came

13 out in 2012, I went online and read it then.

14 Q. Okay.

15 A. And -- and I visited it since. The numbers are

16 kind of ingrained in my head. It's kind of like 20.251

17 in the City of Houston -- and 252 in the City of

18 Houston. I've read it a few times. But that would be

19 the first time.

20 Q. When was the last time you reviewed it prior to

21 your arrest? No, no, I'm sorry, when was the last time

22 you reviewed the charitable feeding ordinance prior to

23 you receiving the citation?

24 A. I couldn't say when was the last time.

25 Q. Okay.

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1 A. I wouldn't know that.

2 Q. I want to just clarify, you were not arrested on

3 March the 3rd, 2023; is that correct?

4 A. That is correct.

5 MR. KALLINEN: Objection, calls for a legal

6 question.

7 MR. SOH:

8 Q. You were not placed in handcuffs?

9 A. No.

10 Q. You were not placed in handcuffs on March the

11 3rd, 2023?

12 A. No, I was not placed in handcuffs.

13 Q. And you were not taken to a police station or a

14 jail on March the 3rd, 2023, correct?

15 A. Right, that's correct.

16 Q. And the reason I'm asking, I just want to clarify

17 for the record, you were just given a written citation

18 and left alone, basically, by Officer Ancira, correct?

19 A. Well, again -- again, to --

20 MR. KALLINEN: Objection, --

21 A. -- go back --

22 MR. KALLINEN: -- vague.

23 A. -- to clarify, --

24 MR. SOH:

25 Q. Yeah.

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1 A. -- at the time, you know, I confronted him to ask

2 him how this was going to go down, --

3 Q. Right.

4 A. -- just given one prior issuance of tickets two

5 days earlier, and he didn't know how it happened two

6 days earlier. So I had no idea what was going to happen

7 that night, and that included the possibility of arrest.

8 Q. All right. But you were not arrested, correct?

9 MR. KALLINEN: Objection, calls for a legal

10 conclusion.

11 A. At the end of that you know that, but going into

12 it I had no idea. So the anxiety and the stress level

13 is there at that point. I have no -- I'm serving food,

14 and all I know is at the end of this thing something's

15 going to happen.

16 MR. SOH:

17 Q. Fair enough. Let's see, you can put that down.

18 What did you -- what happened to the -- what was the

19 ultimate resolution of the ticket that you received on

20 March the 3rd, 2023?

21 A. We had a jury trial, and the jurors came back

22 unanimous for -- is it non-guilty or is it --

23 Q. You were found not guilty?

24 A. I was found not guilty by the jury on a unanimous

25 decision.

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1 So, yeah, he was -- he was trying to tell us not
 2 to serve where we were serving. Would that be
 3 infringing on my speech?
 4 MR. SOH: I'm going to object as nonresponsive.
 5 Q. But, I mean, I guess let me rephrase the
 6 question. Okay?
 7 A. Okay.
 8 Q. From 2011 through the present, did any City of
 9 Houston police officer or employee ever tell you or did
 10 you ever witness a City of Houston police officer or a
 11 City of Houston employee telling another member of Food
 12 Not Bombs hey, you can't post that sign, you can't say
 13 that, or you can't wear that T-shirt?
 14 MR. KALLINEN: Objection, compound, asked and
 15 answered.
 16 A. How about you can't serve here, would that
 17 qualify?
 18 MR. SOH:
 19 Q. No, that's a different thing altogether. I'm
 20 just talking --
 21 A. Okay.
 22 Q. -- about the -- the --
 23 A. Okay. Well, the -- the things that you just
 24 listed, --
 25 Q. Right.

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1 A. -- I would say I hadn't heard that.
 2 Q. Okay. Fair enough. Let's go back to your
 3 declaration here, Exhibit 53. Okay? Some just quick
 4 questions about it. Paragraph 5 you talked about you
 5 attended St. Thomas -- I'll say St. Thomas University.
 6 You were a business major; is that correct?
 7 A. Yeah.
 8 Q. Okay.
 9 A. I was going for accounting.
 10 Q. Okay. Let's go to page 2. And, generally, your
 11 declaration includes a lot of the same information that
 12 was included in your 2019 and 2023 complaints, including
 13 scripture citations, Isaiah and Matthew, as well as the
 14 agreements and mission statement and vision of Food Not
 15 Bombs Houston; is that correct?
 16 A. Right.
 17 Q. Okay.
 18 A. It is.
 19 Q. Paragraph 8 you talk about you share food in
 20 north Houston and Spring Branch?
 21 A. Yes.
 22 Q. We talked about that previously, and I wanted to
 23 get some clarification on that. When you say north
 24 Houston and Spring Branch, are you talking about your
 25 previous testimony about helping to feed homeless people

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1 along Highway 290?
 2 A. Yes.
 3 Q. Okay. And that you will feed there different
 4 times of the day and different days of the week,
 5 correct?
 6 A. Right.
 7 Q. Can you estimate to me -- can you estimate how
 8 many times a week you would do charitable feeding along
 9 Highway 290?
 10 A. Could be two times a week.
 11 Q. Okay.
 12 A. And the day -- there was a lot more flexibility
 13 involved with that. I'm -- I'm bringing it to them, as
 14 opposed to, say, the Food Not Bombs food sharing going
 15 on at the library a specific day and time and they come
 16 to us. I'm bringing it to them. It was a little bit
 17 more flexible.
 18 Q. I meant -- I forgot to ask this follow-up
 19 question to your earlier testimony, and I wanted to
 20 clarify. I believe you said that you would get donated
 21 food on Fridays and then prepare food for the Food Not
 22 Bombs Houston feeding?
 23 A. Yes.
 24 Q. Is that accurate?
 25 A. That's accurate.

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1 Q. Where would you get these donated foods?
 2 A. Whole Food Market had us as part of a program
 3 that they were involved in where, you know, we were one
 4 of a number of groups that would go by and pick up the
 5 food that they were willing to donate to us and to this
 6 cause.
 7 Q. Okay. Any other -- any other places where you
 8 would get donations for your Friday Food Not Bombs
 9 Houston --
 10 A. That was the only place that I picked them up.
 11 Q. Is that the Whole Foods on -- on Voss?
 12 A. The Whole Food on Kirby.
 13 Q. Kirby. Okay.
 14 A. But I think it might be important to point out
 15 that the food that was picked up that Friday, was the
 16 food that was served that Friday, as well, considering
 17 we were talking earlier about food handling and -- and
 18 things like that.
 19 Q. All right. Let's go off the record. I think I
 20 may be done. I just want to check with -- and then --
 21 Randy, are you going to have any questions?
 22 MR. HIROSHIGE: No, no questions from counsel for
 23 Food Not Bombs Houston and Brandon Walsh.
 24 MR. SOH: Give me a minute, and then we'll go
 25 back on and I'll pass the witness. Okay?

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